

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte JEFFREY GARY DENBY and DANIEL ROBERT FUZZEN

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Appeal No. 2002-0251  
Application No. 09/220,170

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ON BRIEF

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Before FRANKFORT, MCQUADE, and BAHR, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's rejection of claims 7, 9 and 14 in Paper No. 10, mailed April 24, 2001. Claims 8, 10 through 13 and 16 stand objected to, but have been indicated by the examiner to be allowable if rewritten in independent form. Claims 1, 3 through 6 and 15, the only other claims remaining in the application, stand allowed. Claim 2 has been canceled.

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As noted on page 1 of the specification, appellants' invention relates to tractor ballast and, more specifically, relates to ballast boxes for attachment to tractor three-point hitches. Independent claim 7 is representative of the subject matter on appeal and a copy of that claim can be found in the Appendix to appellants' brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Nau et al. (Nau)	4,537,423	Aug. 27, 1985
Teich	5,690,359	Nov. 25, 1997

Claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Teich.

Claims 9 and 14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Teich in view of Nau.

Rather than reiterate the examiner's explanation of the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellants regarding those rejections, we make reference to the examiner's answer (Paper No. 13, mailed August 14, 2001) for the examiner's reasoning in support of the

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rejections, and to appellants' brief (Paper No. 12, filed July 30, 2001) for the arguments thereagainst.

### OPINION

In reaching our decision on the obviousness issues raised in this appeal, we have carefully considered appellants' specification and claims, the applied prior art references, and the respective viewpoints advanced by appellants and the examiner. As a consequence of our review, we have made the determination that the examiner's rejections of the appealed claims under 35 U.S.C. § 103(a) will not be sustained. Our reasons for this determination follow.

In considering the examiner's rejection of claim 7 under 35 U.S.C. § 103(a) based on Teich, we note that claim 7 is directed to a combination of a three-point hitch including a pair of lower draft links having a cylindrical hitch bar (18) extending therebetween near rear ends of the draft links and a ballast attachment (24) secured to said links, wherein the ballast attachment has a width less than the distance between the rear ends of the draft links and is formed as a substantially

cubical one-piece structure having a forwardly opening hitch bar receptacle (36) extending rearwardly from and entirely across a front side thereof, said hitch bar receptacle terminating at a downwardly facing seat (46) elevated above the remainder of said receptacle and being shaped complementary to and receiving said hitch bar.

According to the examiner (answer, page 4), Teich discloses a supplementary weight or ballast attachment (24) meeting the requirements of the ballast attachment set forth in appellants' claim 7, except for the fact that the ballast attachment in Teich is formed from three separate weights instead of as a one-piece structure as required in claim 7 on appeal. Citing "Howard vs. Detroit Stove Works" [sic, Howard vs. Detroit Stone Works, 150 US 164 (1893)] for the proposition that forming in one piece an article, which has formerly been formed in two pieces (or three) involves only routine skill in the art, the examiner concludes that it would have been obvious to one of ordinary skill in the art to make the ballast attachment of Teich as a one-piece block as opposed to being made from three separate weights.

As pointed out by appellants on pages 2 and 3 of the brief, what the examiner has lost sight of is the need to treat the claimed subject matter as a whole and not just treat or address the portion of the claim following the recitation "the improvement comprising," as the examiner seems to have done in the rejection before us on appeal. Like appellants, we find nothing in Teich alone that would render obvious the combination set forth in claim 7 on appeal. Contrary to the examiner's apparent belief, appellants are not merely claiming the ballast attachment *per se*, but are claiming a combination of a three-point hitch and a ballast attachment secured to the lower draft links of the hitch in a particular manner, i.e., by having the cylindrical hitch bar (18) affixed to the draft links of the three-point hitch received in the downwardly facing seat (46) at the rear of the forwardly opening hitch bar receptacle (36). The examiner has not specifically addressed this combination, and we see nothing in Teich which would have been suggestive of such a combination.

The examiner's belated attempt to recast the rejection in the "Response to Argument" section of the answer (page 6) and somehow rely on the preamble recitations of appellants' Jepson-

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format claim and what the examiner describes as the "new limitations" in claim 7, purportedly shown to be Teich, is improper and unavailing. Moreover, the mere fact that appellants may have conceded that it is old in the art to secure a three-point hitch bar to a ballast attachment, e.g., perhaps as shown and described in Teich (Fig. 1 and col. 2, lines 55-59), provides no basis whatsoever to modify the combination as shown in Teich to be that which is specifically set forth in appellants' claim 7 on appeal.

Since we have determined that the teachings and suggestions found in Teich would not have made the subject matter as a whole of independent claim 7 on appeal obvious to one of ordinary skill in the art at the time of appellants' invention, we must refuse to sustain the examiner's rejection of that claim under 35 U.S.C. § 103(a).

As for the examiner's rejection of claims 9 and 14 under 35 U.S.C. § 103(a) as being unpatentable over Teich in view of Nau, we have reviewed the patent to Nau, but find nothing therein that provides for that which we have indicated above to be lacking in the examiner's basic rejection based on Teich alone.

Moreover, with particular regard to claim 9, we find the examiner's reliance on Nau, as set forth in the answer (pages 5 and 7), to be entirely misplaced. Like appellants (brief, page 4), we note that item (11) in Nau (Fig. 5) and the portion of the surface thereof which begins at (18) and inclines rearwardly and upwardly therefrom is not a lower surface of a forwardly opening hitch bar receptacle as defined in claim 9 on appeal, but rather forms a part of the nose (2) of the plate-like ballast weight (1) and an upper surface of the receptacle that receives the support or carrier element (3). Thus, while it may have been obvious to modify the hook projection (32) of Teich following teachings relating to Nau's item (11), we see no basis for modifying the lower surface of the forwardly opening receptacle or recess (28) in the ballast weight (24) of Teich in the manner urged by the examiner. Accordingly, the examiner's rejection of claims 9 and 14 under 35 U.S.C. § 103(a) will likewise not be sustained.

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In view of the foregoing, the decision of the examiner to  
reject claims 7, 9 and 14 under 35 U.S.C. § 103(a) is reversed.

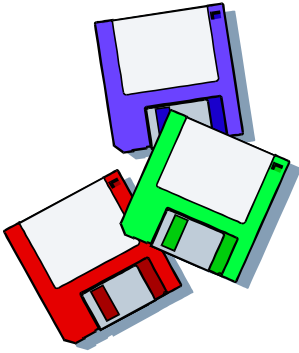
REVERSED

CHARLES E. FRANKFORT	)	
Administrative Patent Judge	)	
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	)	BOARD OF PATENT
JOHN P. MCQUADE	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
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JENNIFER D. BAHR	)	
Administrative Patent Judge	)	

CEF/lbg

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DECISION: REVERSED

Prepared: August 1, 2003

Draft                  Final

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PALM / ACTS 2 / BOOK

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